

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RISQUE VIDEO, INC. and TOP TEN
VIDEO, INC.

vs.

SUPER VIDEO PLUS, SUPER VIDEO
PLUS OF BLACKWOOD and GARY
KOOBRICK

CIVIL ACTION

NO.

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiffs, Risqué Video, Inc., and Top Ten Video, Inc. by and through their undersigned counsel, and for their Complaint against Defendants, Super Video Plus, Super Video Plus of Blackwood, and Gary Koobrick, allege as follows:

PARTIES

1. Plaintiff, Risqué Video, Inc. is a Pennsylvania corporation with its principal place of business located at 4301 Chestnut Street, Philadelphia, PA 19104.
2. Plaintiff, Top Ten Video, Inc. is a Pennsylvania corporation trading as Risqué Video with business addresses at 23 W. Rt. 30, Berlin, New Jersey 08009; 906 N. Whitehorse Pike, Stratford, New Jersey 08084; and 1135 Hurffville Road, Deptford, New Jersey 08096.
3. Upon information and belief, Defendant Super Video Plus, is a New Jersey corporation with a principal place of business located at 1107 S. Black Horse Pike, Blackwood, N.J. 08012.

4. Upon information and belief, Defendant Super Video Plus of Blackwood, is a New Jersey corporation with a principal place of business located at 1107 B. Black Horse Pike, Blackwood, N.J. 08012.

5. Upon information and belief, Defendant Gary Koobrick is an individual, a New Jersey resident with a principal place of business located at 1107 S. Black Horse Pike, Blackwood, N.J. 08012.

6. Upon information and belief, Defendant Koobrick is the owner and operator of Super Video Plus and/or Super Video Plus of Blackwood controlling its business activities, from which those activities he derives financial benefit.

JURISDICTION AND VENUE

7. This Court has original jurisdiction of this dispute under 28 U.S.C. §§ 1331 and 1367 and under 15 U.S.C. § 1121 based on acts of trademark infringement.

8. Venue of the within dispute is proper in this judicial district pursuant to 28 U.S.C. 1391 (b) and/or (c).

9. This Court has personal jurisdiction over the Defendants pursuant to Pa. Stat. Ann. Tit. 42, § 5322, and/or Fed. R. Civ. P. 4(k).

FACTS COMMON TO ALL COUNTS

10. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, unfair competition and other torts, which arise from Defendants' infringing use of Plaintiff's Risqué Video mark.

11. For the past twenty (20) years or approximately 1987, Risqué Video has been renting and/or selling adult videos and related merchandise to the public through its Risqué Video retail stores.

12. As a result of its success, over its twenty-year history, Risqué Video now operates four stores throughout Pennsylvania and licenses its Risqué Video Mark to Top Ten Video, Inc. who owns and operates three stores in New Jersey.

13. In addition, Risqué Video operates the Internet web site RISQUEVIDEO.COM through which it promotes and sells its merchandise namely, adult entertainment motion pictures and related merchandise. As a result of its popularity, Risqué Video has become known in the adult industry as a major competitor in the adult retail industry.

14. Risqué Video owns and uses in commerce a family of RISQUE marks including, RISQUE VIDEO & design, RISQUEVIDEO.COM, RISQUEEMPIRE.COM and several other domain names.

15. Risqué Video owns the federal trademark registration for the word mark RISQUE VIDEO, U.S. Reg. No. 2,892,434. Risqué Video makes no claim to the exclusive right to use "Video" apart from "Risqué" thus making "RISQUE" the dominant portion of the mark. A true and correct copy of the registration is attached as Exhibit 1.

16. Risqué Video has spent significant money and effort in developing the recognition of its RISQUE mark and related goods and services.

17. Risque's mark is distinctive.

18. Through its sale and rental of video tapes and goods, the RISQUE name

and mark has become associated in the minds of the public with Risqué Video's goods and services.

19. As such, the RISQUE mark has acquired secondary meaning with the relevant consuming public as being affiliated, connected or associated with Risqué Video's products and services.

20. Through use of the mark, Risqué Video has developed significant goodwill in the RISQUE mark.

21. Upon information and belief, Defendants engage in the sale and rental of adult videotapes and related merchandise.

22. Upon information and belief, Defendants use the word RISQUE as a mark to advertise and promote their goods and services.

23. Defendants market their DVDs, adult rentals and sales using the word RISQUE in connection therewith. And, Defendants offer almost identical goods and services in the same geographic area using the word RISQUE as a mark in print advertisements, store logos and worldwide on the Internet.

24. Defendants have used and continue to use the RISQUE mark in commerce, not only in New Jersey but throughout the United States and worldwide doing business on an Internet website located at www.supervideo.formovies.com to advertise and promote the sale of its goods.

25. Upon information and belief, Defendants' use of the word RISQUE in the promotion and sale of their goods and services is in bad faith. For example, the word RISQUE is prominently displayed in Defendants' advertisements and strategically sized and located in each advertisement.

26. Upon information and belief, Defendants have deliberately sought to benefit from and trade upon and has in fact benefited from and traded upon the goodwill, name and reputation of Plaintiff, all to the Plaintiff's damage and detriment.

27. Defendants are likely to cause confusion or mistake among customers, prospective consumers, or are likely to mislead and/or deceive customers and prospective customers with respect to the origin and quality of Defendants' services.

28. Defendants compete directly with Plaintiffs in the sale and rental of videotapes, DVDs and adult merchandise.

29. Defendants target the same consumer base as Plaintiffs and are in close proximity to Top Ten Video's stores.

30. Plaintiffs' goodwill is extremely valuable and Defendants' continued unauthorized use of the RISQUE designation is detrimental to Plaintiffs.

31. The Lanham Act grants this Court the authority to issue both preliminary and permanent injunctive relief to halt infringements such as those being committed by Defendants.

32. Defendants have not received authorization or permission from Risqué Video to use the RISQUE designation nor has Risqué Video acquiesced to Defendants' use of the RISQUE designation.

33. Risqué Video has written to Defendants on at least two separate occasions to notify them of Risqué Video's right in the mark and requested that they cease their infringing conduct. However, Defendants have failed to comply with Plaintiffs' request and continue to advertise their goods and services utilizing the RISQUE name.

34. Plaintiffs have been, and continue to be, irreparably injured by all of the

violations described herein, and have no adequate remedy at law. Unless restrained by this Court, Plaintiffs will continue to be irreparably injured by Defendants' unlawful conduct.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

35. Plaintiffs incorporate each and every averment contained above as though fully rewritten herein.

36. This cause of action is for trademark infringement pursuant to 15 U.S.C. § 1117 et seq.

37. Defendants' unauthorized use of the word RISQUE as a mark infringes the Registered Mark by creating a likelihood of confusion, mistake or deception in the marketplace as consumers and potential consumers will necessarily be confused into believing that Defendants' establishment, goods, services and website are owned by, affiliated with or sponsored by Plaintiffs.

38. Upon information and belief, Defendants' use of the word RISQUE as a mark is with the knowledge that such use is intended to create a likelihood of confusion, mistake or deception in the marketplace as consumers and potential consumers will necessarily be confused into believing that Defendants' establishment and website are owned by, affiliated with or sponsored by Plaintiffs.

39. Plaintiffs have been irreparably harmed by Defendants' conduct and are without an adequate remedy at law.

40. As a result of Defendants' infringing conduct, Plaintiffs have been

and are being irreparably harmed and are entitled to injunctive relief pursuant to 15 U.S.C. § 1116 as well as monetary damages, which can be trebled, and attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT II
FALSE REPRESENTATIONS AND FALSE DESCRIPTION
OF ORIGIN IN VIOLATION OF THE LANHAM ACT
(15 U.S.C. § 1125(a))

41. Plaintiffs incorporate each and every averment contained above as though fully rewritten herein.

42. Through the acts described above and the false and misleading representations made by the Defendants' use of the RISQUE mark. Defendants have publicly conveyed the false and misleading representation that Defendants and Plaintiffs are somehow affiliated, connected or associated with each other, when in fact they are not. And Defendants are conveying the false and misleading representation that the Plaintiffs endorse Defendants' goods and services.

43. Also through the acts described above, and the use of RISQUE, Defendants are causing initial interest confusion in violation of the Lanham Act.

44. These actions are contrary to honest commercial practices and are likely to deceive customers in violation of Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a).

45. As a result of Defendants' false, misleading and deceptive practices, Plaintiffs have been and are being irreparably harmed and is entitled to injunctive relief pursuant to 15 U.S.C. § 1116 as well as monetary damages, which can be trebled, and attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT III
TRADEMARK DILUTION
(15 U.S.C. § 1125(c))

46. Plaintiffs incorporate each and every averment contained above as though fully rewritten herein.

47. The Risqué Video mark is distinctive and famous as set forth in the Lanham Act, 15 U.S.C. § 1125(c).

48. Defendants' use of the word RISQUE as a mark to promote and sell similar products and services has diluted the distinctive and famous, favorable and unique quality of the Risqué Video mark, in violation of the Lanham Act, 15 U.S.C. § 1125(c).

49. The blurring effect caused by Defendants' use of RISQUE in connection with the sales of their goods and services has been harmful to Plaintiffs' ability to market their own products and services using the RISQUE Mark. Unless the Defendants are enjoined from further uses, public and customer confusion will render Risqué Video's Mark useless as unique, distinctive and famous identifiers of Plaintiffs' services and products offered for sale in its stores and on its websites.

50. Defendants' actions, as described above, are a further violation of the Lanham Act, 15 U.S.C. § 1125(c).

51. Defendants' actions, as described above, are intended to dilute Risqué Video's Mark and intended to profit the Defendants by trading upon Risqué Video's reputation.

52. As a result of Defendants' actions and intentions to dilute Risqué Video's mark and profit upon Risqué Video's reputation, Plaintiffs have been and are being irreparably harmed and are entitled to injunctive relief pursuant to 15 U.S.C. § 1116 as

well as monetary damages, which can be trebled, and attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT IV
COMMON LAW TRADEMARK INFRINGEMENT
(54 Pa Cons. Stat. § 1126; Pennsylvania Common Law)

53. Plaintiffs incorporate each and every averment contained above as though fully rewritten herein.

54. By engaging in the conduct described above, Defendants infringed the Risqué Video mark in violation of Risqué Video's common law rights and good faith interest in the Mark.

55. Plaintiffs have used the Risqué Video Mark in commerce in Pennsylvania for approximately twenty years and New Jersey as well as throughout the United States and worldwide acquiring a secondary meaning associated exclusively with Plaintiffs' products and services.

56. Unless the Defendants are enjoined from further use of Risqué Video's mark, public and customer confusion will render it useless as a unique and distinctive identifier of Plaintiffs' services and products for sale at its establishments and on its websites.

57. Plaintiffs have been irreparably harmed by Defendants' conduct and are without an adequate remedy at law.

58. Unless the relief requested herein by Plaintiffs is granted, Plaintiffs may suffer further serious and irreparable harm.

COUNT V
INJURY TO BUSINESS OR REPUTATION; DILUTION
(54 Pa. Cons. Stat. § 1124)

59. Plaintiffs incorporate each and every averment contained above as though fully rewritten herein.

60. By engaging in the conduct described above, Defendants have diluted and blurred the distinctive Risqué Video mark in violation of the anti-dilution provision of the Pennsylvania Trademark Act (54 Pa. Cons. Stat. § 1124), causing injury to Plaintiffs' business and reputation.

61. Unless Defendants are enjoined from further unauthorized actions, public and customer confusion ultimately will render the Risqué Video mark useless as unique and distinctive identifiers of Plaintiffs' products and services offered for sale at its establishments and on its websites.

62. By their conduct, as alleged herein, Defendants have willfully intended to trade on Plaintiffs' reputation and/or cause dilution of the Risqué Video mark.

63. Plaintiffs have been irreparably harmed by Defendants' conduct and are without an adequate remedy at law. Unless the relief requested herein by Plaintiffs is granted, Plaintiffs may suffer further serious and irreparable harm.

COUNT VI
UNFAIR COMPETITION
(Pennsylvania Common Law)

64. Plaintiffs incorporate each and every averment contained above as though fully rewritten herein.

65. By engaging in the conduct described above, Defendants have unlawfully and without privilege engaged in unfair competition under the common law of the Commonwealth of Pennsylvania to the detriment of Plaintiffs in violation of the law.

66. Plaintiffs are being immediately and irreparably harmed by Defendants' conduct and are without an adequate remedy at law.

67. Unless the relief requested herein by Plaintiffs is granted, Plaintiffs will suffer further serious, immediate and irreparable harm.

REQUESTED RELIEF

WHEREFORE, Plaintiffs Risqué Video, Inc. and Top Ten Video, Inc., t/a Risqué Video, hereby demand that judgment be entered in their favor and against Defendants, as follows:

- a. the Court adjudge and declare that Defendants have infringed Risqué Video, Inc.'s trademark in violation of 15 U.S.C. § 1051 *et seq.*; have engaged in unfair competition in violation of 15 U.S.C. § 1125(a) and other similar state laws; and have otherwise injured Plaintiffs in the manner complained herein;
- b. the Court preliminarily and permanently enjoin Defendants, their officers, agents, servants, and employees and those persons in active concert or participation with them from making false representations or otherwise

violating Section 43 of the Lanham Act, violating the Pennsylvania Trademark Act, and engaging in unfair competition with Plaintiffs;

- c. the Court order Defendants to file with the Court and to serve on Plaintiffs' counsel within thirty (30) days after the service of any order enjoining or restraining Defendants from making false representations under Section 43 of the Lanham Act, or within a reasonable time as the Court may direct, a report, in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with such order;
- d. the Court award Plaintiffs punitive or exemplary damages on the basis of Defendants' willful, malicious and intentional conduct;
- e. the Court award Plaintiffs their costs and disbursements including reasonable attorneys' fees; and
- f. the Court grants such further and additional relief as this Court may deem just and proper.

Respectfully submitted,



Marlo Pagano-Kelleher, Esq.
Law Offices of Marlo Pagano-Kelleher, LLC
Attorney for Plaintiffs, Risqué Video, Inc. and
Top Ten Video, Inc., t/a Risqué Video

February 5, 2008

EXHIBIT A

[Trademarks](#) > **Trademark Electronic Search System (TESS)**

TESS was last updated on Thu Nov 1 04:06:25 EDT 2007

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)

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Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

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(Use the "Back" button of the Internet

Browser to return to TESS)



Word Mark RISQUE VIDEO

Goods and Services IC 041. US 100 101 107. G & S: Rental of videocassettes. FIRST USE: 19870111. FIRST USE IN COMMERCE: 19870111

IC 035. US 100 101 102. G & S: Retail store services featuring video tapes. FIRST USE: 19870111. FIRST USE IN COMMERCE: 19870111

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.11.04 - Human lips or mouths

Serial Number 76417924

Filing Date May 30, 2002

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition July 20, 2004

Registration Number 2892434

Registration Date October 12, 2004

Owner (REGISTRANT) Risque Video, Inc. CORPORATION PENNSYLVANIA 4301 Chestnut Street Philadelphia PENNSYLVANIA 19104

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VIDEO" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE